

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.953 of 2016 and
LPA No.1103 of 2015

Date of decision: 26.5.2016

Kendriya Vidyalaya Sangathan & Others

.... Appellants

Versus

Seema and Others

.... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.
HON'BLE MR. JUSTICE GURMIT RAM.

Present: Mr. Aman Chaudhary, Advocate for the
applicants/appellants.

Mr. Ankit Grewal, Advocate for the respondents.

S.S. Saron, J.

CM No.953 of 2016

Affidavit of Sh. Gianeshwar Kumar, Officiating Principal,
Kendriya Vidyalaya Sangathan (KVS), Rohtak attached with the civil
misc. application along with Annexures A1 and A2 are taken on
record subject to just exceptions.

C.M. stands disposed of.

LPA No.1103 of 2015

This Letters Patent Appeal has been filed by the
Kendriya Vidyalaya Sangathan (KVS) and others against the
judgment and order dated 4.3.2015 passed by the learned Single
Judge in CWP No.6648 of 2014 titled Seema and others v. Kendriya
Vidyalaya Sangathan & others.

Seema (respondent No.1) is the mother of Nishant, Siksha and Diksha (respondents No.2, 3 and 4). The respondents filed a petition in this Court to provide admission/promotion to respondents No.2, 3 and 4 against the vacant reserved seats of their respective classes; besides, direct the respondents to modify their admission policy and to provide for the process of admission/promotion/consideration for reserved category in Classes II to VIII keeping in view the provisions regarding 25% quota for Weaker Sections and Disadvantaged Groups Category seats in terms of Section 12 (1) (c) of the Right of Children to Free and Compulsory Education Act, 2009 ('Act' - for short). A further direction was sought against the appellants to modify their admission policy and to specifically provide for the process to make up for the previous year deficiencies of seats for the Weaker Sections and Disadvantaged Groups by adhering with the 25% seats norms for the said categories and in case the same are not filled in the previous year to fill the said vacant seats in the current academic year.

Mr. Aman Chaudhary, Advocate appearing for the appellants submits that though the provisions of the Act provided for reservation of 25% seats of the strength of the class for elementary education for children belonging to Weaker Sections and Disadvantaged Groups in the neighbourhood and provide them free and compulsory education till its completion; however, there were no guidelines issued by the Government of India, Ministry of Human Resources Development, Department of School Education and Literacy informing the appellants about the reservation of 25% seats of the strength of a class for children belonging to Weaker

Sections and Disadvantaged Groups and the manner in which such seats were to be filled. It is also submitted that at the time when respondents No.2, 3 and 4 were admitted, they were not of the category of Weaker Sections or Disadvantaged Groups and their claims for being amongst the Weaker Sections and Disadvantaged Groups category is only after their father passed away on 11.10.2013. Therefore, they cannot claim admissions to the school of the appellants from amongst the category of Weaker Sections or Disadvantaged Groups retrospectively.

In response, Mr. Ankit Grewal, Advocate learned counsel appearing for the respondents submits that the appellants were liable to comply with the provisions of the Act at the time of admissions of students for the elementary education classes and it having failed to comply with the provisions of the Act and the seats being available, the respondents are entitled to the same as they now admittedly belong to the Weaker Sections and Disadvantaged Groups category.

We have given our thoughtful consideration to the matter.

The appellant – Kendriya Vidyalaya Sangathan is a 'specified category' School as defined in Section 2 (p) of the Act. Respondents No.2, 3 and 4 are minor children who filed the petition through their mother namely Seema (respondent No.1). They are students of Kendriya Vidyalaya Sangathan. Nishant (respondent No.2) was in the IIIrd Class while Siksha and Diksha (respondents No.3 and 4) were in the Vth Class.

The 86th Amendment to the Constitution of India introduced Article 21-A making the Right to Education a

Fundamental Right. The Act was passed in consequence of the said 86th Amendment. The Act mandates that every child of the age of 6 to 14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

Section 12 (1) (c) of the Act which is relevant for the present petition reads as under:-

"12. Extent of school's responsibility for free and compulsory education – (1) for the purposes of this Act, a school –

- (a) Specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein.
- (b) Specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses subject to a minimum of twenty-five per cent;
- (c) Specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in Class I, to the extent of at least twenty-five percent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary

education till its completion; (emphasis added)

Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education."

Section 2 (n) of the Act as mentioned in clause (c) of Section 12 (1) of the Act defines 'School' and reads as under:-

(n) "school" means any recognised school imparting elementary education and includes—

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

Clause (c) of Section 12 (1) of the Act enjoins that all 'specified category' or private schools must reserve 25% of their reserved seats for children belonging to Weaker Sections and Disadvantaged Groups from the neighbourhood and provide them

admissions from Class I onwards. Wherever such a school provides pre-school education, these rules are applicable to Pre School education as well.

Section 2 (e) of the Act defines, "child belonging to weaker section". It is defined that "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification. The validity of the Act was upheld by the Hon'ble Supreme Court in Supreme Court Society for Unaided Private Schools of Rajasthan v. Union of India and another, (2012) 6 SCC 1. Consequently the requirement of admitting in Class I to the extent of at least 25% of the strength of the Class for children belonging to Weaker Sections and Disadvantaged Groups in the neighbourhood and provide free and compulsory elementary education till its completion in all private unaided primary schools and specified category schools was upheld.

In consequence of the provisions of the Act, the appellants were to admit in Class I to the extent of at least 25% of the strength of the Class for children belonging to Weaker Sections and Disadvantaged Groups in the neighbourhood and provide them with free and compulsory elementary education till its completion. Nishant (respondent No.2) was admitted in the appellants - School in the Session 2012-13, while Siksha and Diksha (respondents No.3 and 4) were admitted in the Session 2010-11. However, despite the provisions of Section 12 (1) (c) of the Act, the appellants did not earmark or reserve in Class I at least 25% seats of the strength of that class for children belonging to Weaker Sections and

Disadvantaged Groups in the neighbourhood and provide free and compulsory elementary education till its completion.

As already noticed, Nishant (respondent No.2) was admitted in the appellants - School in the Session 2012-13, while Siksha and Diksha (respondents No.3 and 4) were admitted in the Session 2010 -11. At that time they did not apply for and neither were they in the category of Weaker Sections or Disadvantaged Groups. They came to fall in the category of the Weaker Sections after the demise of their father on 11.10.2013.

In terms of the affidavit of Sh. Gianeshwar Kumar, Officiating Principal, Kendriya Vidyalaya Sangathan that has been filed and taken on record, it is mentioned that the Government of India, Ministry of Human Resources Development, Department of School Education and Literacy issued guidelines vide forwarding letter dated 25.7.2011. The said guidelines were issued to all the Education Secretary of all States/UTs, Education Board and Commissioner Navodhaya Vidyalaya Samiti, Kendriya Vidyalaya Sangathan in exercise of powers under Section 35 (1) of the Act regarding free and compulsory education in a neighbourhood school. The guidelines (Annexure A1) have been placed on record. The said guidelines in Chapter 4 provide for responsibilities of schools and teachers. The said guidelines (Annexure A1) in fact reiterate the provision of Section 12 (1) (c) of the Act. It is provided therein that all unaided and 'specified category' schools namely Kendriya Vidyalaya Sangathan, Navodya Vidyalaya Samiti, Sainik schools or other schools having a distinct character as specified by the notification by the State Government/UT shall admit and provide free and compulsory education to at least 25% of

the annual class I intake (or pre- primary section as the case may be) of children belonging to Weaker Sections and Disadvantaged Groups in the neighbourhood. The stand of the appellants that the provisions of the Act came into effect only with the issuance of the guidelines (Annexure A1) is not tenable. The provisions of the Act come into effect after these are published in the official Gazette.

The minutes of the 90th Meeting of the Board of the Governors of the Kendriya Vidyalaya Sangathan held in the Conference Hall, Shastri Bhawan (Annexure A2) have been placed on record. These relates to guidelines of admission to Kendriya Vidyalaya for the Session 2011-12. The position as mentioned in Section 12 (1) (c) of the Act, the guidelines (Annexure A1) has been reiterated.

The position, therefore, is that the provisions of the Act have only been reiterated in the guidelines (Annexure A1) and the minutes of the Meeting (Annexure A2). In the circumstances, the stand of the learned counsel for the appellants that the provisions of the Act came into effect only with the issuance of the guidelines, is not tenable as the Act came into effect only from its publication in the official Gazette.

In the circumstances, the appellants were liable to apply the provisions of the Act for the Weaker Sections and the Disadvantaged Groups category by admitting in Class I to the extent of at least 25% of the strength of that Class, children belonging to the Weaker Sections and Disadvantaged Groups in the neighbourhood and provide free and compulsory education till its completion.

This admittedly was not done and probably because the appellants was unaware of the Act having been passed. Be that as it may. It is to be noticed that now for the Session 2011-12 the process of admission for Class I no longer survives. However, in terms of the affidavit of Sh. Gianeshwar Kumar, Officiating Principal KVS, Rohtak that has been filed, it is inter alia stated that 14 students belonging to SC/ST, BPL or EWS card holders who were admitted in the session 2011-12 were converted to EWS (Weaker Sections and Disadvantaged Groups) seats out of 20 seats falling to EWS (Weaker Sections and Disadvantaged Groups) quota being 25% out of the total 80 seats in Class I. It is also stated that there is no provision for admitting students under the EWS (Weaker Sections and Disadvantaged Groups) quota in any other class other than Class I or for converting the students already studying in other classes to EWS (Weaker Sections and Disadvantaged Groups) quota. It is further stated that respondent No.2 was admitted in class I in the session 2012-13 under General Category as his father was holder of API (Above Poverty Line) Ration Card and was not in the EWS (Weaker Sections and Disadvantaged Groups) quota. In the aforesaid session 2012-13, it is submitted that 15 applications were received for admission to Class I under the EWS quota. All 15 students were admitted under the said quota out of the 20 seats reserved for the said being 25% out of total 80 seats in Class I.

It is to be noticed that five seats for EWS are still lying vacant in the session 2011-12 and despite the provisions of the Act being applicable, the appellants did not admit in Class I to the extent of at least 25% of the strength of that Class, children belonging to Weaker Sections and Disadvantaged Groups in the

neighbourhood and provide free and compulsory elementary education till its completion, which is the requirement in terms of Section 12 (1) (c) of the Act as referred to above. Therefore, there being an infraction of the statutory provisions of the Act, the appellants are liable to comply with the same when they can do so at this stage also. It is to be noticed that there is no other claimant, therefore, respondents No.2 to 4 are liable to be adjusted against the said five vacant seats for the Weaker Sections and Disadvantaged Groups in the neighbourhood.

In the circumstances, even if the contention of the learned counsel for the appellants that the learned Single Judge was not liable to grant admission to respondents No.2 to 4 against the EWS (Weaker Sections and Disadvantaged Groups) category retrospectively is inconsequential as they are liable to be adjusted against the five vacant seats.

For the foregoing reasons, there is no merit in the appeal and the same is, accordingly, dismissed. There shall, however, be no order as to costs.

(S.S. Saron)
Judge

(Gurmit Ram)
Judge

26.5.2016
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Note: Whether to be referred to the reporter : Yes